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8 IN THE UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11 PATRICIA L. BRUCE and KENNETH
DONAHUE, individually and on behalf of all
12 others similarly situated,

13 Plaintiffs,

14 v.

15 H. FREDERICK CHRISTIE, MARK
16 SWATEK, BRUCE EDWARDS, KIMBERLY
ALEXY, DONOVAN HUENNEKENS,
17 MAUREEN KINDEL, RICHARD NEWMAN,
LINDA GRIEGO, WILLIAM JONES,
18 THOMAS IINO, SOUTHWEST WATER
COMPANY, SW MERGER
19 ACQUISITION CORP., and SW MERGER
20 SUB CORP.,

21 Defendants.
22
23

Case No: CV 10-1923-JFW
(VBKx)

SECOND AMENDED CLASS
ACTION COMPLAINT

24 Plaintiffs, by their attorneys, allege upon information and belief, except for their own acts,
25 which are alleged on knowledge, as follows:

26 1. Plaintiffs bring this action on behalf of the public stockholders of SouthWest Water
27 Company ("SouthWest Water" or the "Company") against SouthWest Water and its Board of
28

1 Directors seeking equitable relief for their violations of Rule 14a-9(a) promulgated under the
2 Securities Exchange Act of 1934 ("Rule 14a-9"), breaches of fiduciary duty and other violations of
3 state law arising out of their attempt to sell the Company to Defendants SW Merger Acquisition
4 Corp. and SW Merger Sub Corp. (collectively the "Buyers") (entities controlled by institutional
5 investors advised by J.P. Morgan Asset Management and Water Asset Management, L.L.C.) by
6 means of an unfair process and for an unfair price of \$11 cash for each share of SouthWest Water
7 common stock (the "Proposed Transaction"). The Proposed Transaction is valued at approximately
8 \$275 million.
9

10 JURISDICTION AND VENUE

11 2. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question
12 jurisdiction), as this Complaint alleges violations of Rule 14a-9. This court has jurisdiction over the
13 state law claims pursuant to 28 U.S.C. §1367.

14 3. Alternatively, this Court has subject matter jurisdiction over this action pursuant to
15 28 U.S.C. § 1332, as the amount in controversy exceeds \$75,000 and there is complete diversity of
16 citizenship between the plaintiff and the defendants. *See* 28 U.S.C. § 1332. As described below,
17 Plaintiffs are residents of South Carolina and Oregon, and no Defendants are citizens of either state.
18 In this action, Plaintiffs seek to enjoin a transaction valued at approximately \$275 million and
19 accordingly the amount in controversy requirement is met.
20

21 4. Venue is proper in this District because many of the acts and practices complained of
22 herein occurred in substantial part in this District. In addition, SouthWest Water maintains its
23 principal executive offices in California.
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PARTIES

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2 5. Plaintiff Patricia L. Bruce, a citizen of South Carolina, and Kenneth Donahue, a
3 citizen of Oregon, (collectively "Plaintiffs") are and have been at all relevant times the owner of
4 shares of common stock of SouthWest Water.

5 6. SouthWest Water is a corporation organized and existing under the laws of the State
6 of Delaware. It maintains its principal corporate offices at One Wilshire Building, 624 South Grand
7 Avenue, Suite 2900, Los Angeles, California 90017, and provides water and wastewater related
8 services principally in the United States. The company offers operations, maintenance, and
9 management services, including water production, treatment, and distribution, wastewater collection
10 and treatment, customer services, and utility infrastructure construction management.

12 7. Defendant H. Frederick Christie ("Christie") has been the Chairman of the Board of
13 the Company since 2009 and a director of the Company since 1996. He is a citizen of the State of
14 California.

15 8. Defendant Mark Swatek ("Swatek") has been Chief Executive Officer and a director
16 of the Company since 2006 and President of the Company since 2009. He is a citizen of the State of
17 California.

19 9. Defendant Bruce Edwards ("Edwards") has been a director of the Company since
20 2009. He is a citizen of the State of California.

21 10. Defendant Kimberly Alexy ("Alexy") has been a director of the Company since
22 2009. She is a citizen of the State of California.

23 11. Defendant Donovan Huennekens ("Huennekens") has been a director of the
24 Company since 1969. He is a citizen of the State of California.

26 12. Defendant Maureen Kindel ("Kindel") has been a director of the Company since
27 1997. She is a citizen of the State of California.

1 13. Defendant Richard Newman (“Newman”) has been a director of the Company since
2 1991. He is a citizen of the State of California.

3 14. Defendant Linda Griego (“Griego”) has been a director of the Company since 2006.
4 He is a citizen of the State of California.

5 15. Defendant William Jones (“Jones”) has been a director of the Company since 2004.
6 He is a citizen of the State of California.

7 16. Defendant Thomas Iino (“Iino”) has been a director of the Company since 2007. He
8 is a citizen of the State of California.

9 17. Defendants referenced in ¶¶ 7 through 16 are collectively referred to as Individual
10 Defendants and/or the SouthWest Water Board. As officers and/or directors of SouthWest Water,
11 the Individual Defendants have a fiduciary relationship with Plaintiffs and other public shareholders
12 of SouthWest Water, and owe them the highest obligations of good faith, fair dealing, loyalty and
13 due care.
14

15 18. Defendant SW Merger Acquisition Corp. is a Delaware Corporation whose principal
16 place of business is in Delaware, and is an entity controlled by institutional investors advised by J.P.
17 Morgan Asset Management and Water Asset Management L.L.C.
18

19 19. Defendant SW Merger Sub Corp. is a Delaware whose principal place of business is
20 in Delaware, and is wholly owned by SW Merger Acquisition Corp. that was created for the
21 purposes of effectuating the Proposed Transaction.
22

23 **INDIVIDUAL DEFENDANTS’ FIDUCIARY DUTIES**

24 20. By reason of Individual Defendants’ positions with the Company as officers and/or
25 Directors, they are in a fiduciary relationship with Plaintiffs and the other public shareholders of
26 SouthWest Water and owe them, as well as the Company, a duty of highest good faith, fair dealing,
27 loyalty, and full, candid, adequate disclosure, as well as a duty to maximize shareholder value.
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1 21. Where the officers and/or Directors of a publicly traded corporation undertake a
 2 transaction that will result in either: (i) a change in corporate control; (ii) a break up of the
 3 corporation's assets; or (iii) sale of the corporation, the Directors have an affirmative fiduciary
 4 obligation to obtain the highest value reasonably available for the corporation's shareholders, and if
 5 such transaction will result in a change of corporate control, the shareholders are entitled to receive
 6 a significant premium. To comply diligently with their fiduciary duties, the Directors and/or
 7 officers may not take any action that:

- 8 (a) adversely affects the value provided to the corporation's shareholders;
- 9 (b) favors themselves, will discourage, or will inhibit alternative offers to
 10 purchase control of the corporation or its assets;
- 11 (c) contractually prohibits them from complying with their fiduciary duties;
- 12 (d) will otherwise adversely affect their duty to search and secure the best value
 13 reasonably available under the circumstances for the corporation's shareholders; and/or
 14
- 15 (e) will provide the Directors and/or officers with preferential treatment at the
 16 expense of, or separate from, the public shareholders.
 17

18 22. In accordance with their duties of loyalty and good faith, the Individual Defendants,
 19 as Directors and/or officers of SouthWest Water, are obligated to refrain from:

- 20 (a) participating in any transaction where the Directors or officers' loyalties are
 21 divided;
- 22 (b) participating in any transaction where the Directors or officers receive, or are
 23 entitled to receive, a personal financial benefit not equally shared by the public shareholders of the
 24 corporation; and/or
- 25 (c) unjustly enriching themselves at the expense or to the detriment of the public
 26 shareholders.
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1 23. Plaintiffs allege herein that the Individual Defendants, separately and together, in
2 connection with the Proposed Transaction are knowingly or recklessly violating their fiduciary
3 duties, including their duties of loyalty, good faith and independence owed to Plaintiffs and other
4 public shareholders of SouthWest Water, or are aiding and abetting others in violating those duties.

5 24. Defendants also owe the Company's stockholders a duty of candor, which includes
6 the disclosure of all material facts concerning the Proposed Transaction, and particularly the
7 fairness of the price offered for the stockholders' equity interest. Defendants are knowingly or
8 recklessly breaching their fiduciary duty of candor by failing to disclose all material information
9 concerning the Proposed Transaction and/or aiding and abetting other Defendants' breaches.
10

11 **CONSPIRACY, AIDING AND ABETTING, AND CONCERTED ACTION**

12 25. In committing the wrongful acts alleged herein, each of the Defendants has pursued
13 or joined in the pursuit of a common course of conduct and acted in concert with and conspired with
14 one another in furtherance of their common plan or design. In addition to the wrongful conduct
15 herein alleged as giving rise to primary liability, the Defendants further aided and abetted and/or
16 assisted each other in breach of their respective duties as herein alleged.
17

18 26. During all relevant times hereto, the Defendants initiated a course of conduct which
19 was designed to and did: (i) permit the Buyers to attempt to eliminate the public shareholders'
20 equity interest in SouthWest Water pursuant to a defective sales process, and (ii) permit the Buyers
21 to buy the Company for an unfair price. In furtherance of this plan, conspiracy, and course of
22 conduct, Defendants took the actions as set forth herein.
23

24 27. Each of the Defendants aided and abetted and rendered substantial assistance in the
25 wrongs complained of herein. In taking such actions, as particularized within this document, to
26 substantially assist the commission of the wrongdoing complained of, each Defendant acted with
27 knowledge of the primary wrongdoing, substantially assisted the accomplishment of that
28

1 wrongdoing, and was aware of his or her overall contribution to and furtherance of the wrongdoing.
 2 The Defendants' acts of aiding and abetting include, *inter alia*, the acts each of them are alleged to
 3 have committed in furtherance of the conspiracy, common enterprise, and common course of
 4 conduct complained of herein.

5 **CLASS ACTION ALLEGATIONS**

6 28. Plaintiffs bring this action on their own behalf and as a class action on behalf of all
 7 owners of SouthWest Water common stock and their successors in interest, except Defendants and
 8 their affiliates (the "Class").
 9

10 29. This action is properly maintainable as a class action for the following reasons:

11 (a) the Class is so numerous that joinder of all members is impracticable. As of
 12 March 15, 2010, SouthWest Water has approximately 24.88 million shares outstanding.

13 (b) questions of law and fact are common to the Class, including, *inter alia*, the
 14 following:
 15

- 16 (i) Have the Individual Defendants misrepresented and omitted material
 17 facts in violation of Section 14(a) of the Exchange Act;
- 18 (ii) whether the Individual Defendants breached their fiduciary duties
 19 owed by them to Plaintiffs and the others members of the Class;
- 20 (iii) whether the Individual Defendants, in connection with the Proposed
 21 Transaction of SouthWest Water by the Buyers, are pursuing a course
 22 of conduct that does not maximize SouthWest Water's value, in
 23 violation of their fiduciary duties;
- 24 (iv) whether the Individual Defendants misrepresented and omitted
 25 material facts, in violation of their fiduciary duties owed by them to
 26 Plaintiffs and the other members of the Class;
 27
 28

1 (v) whether SouthWest Water and Buyers aided and abetted the
 2 Individual Defendants' breaches of fiduciary duty; and

3 (vi) whether the Class is entitled to injunctive relief or damages as a result
 4 of Defendants' wrongful conduct.

5 (c) Plaintiffs are committed to prosecuting this action and have retained
 6 competent counsel experienced in litigation of this nature.

7 (d) Plaintiffs' claims are typical of those of the other members of the Class.

8 (e) Plaintiffs have no interests that are adverse to the Class.

9 (f) The prosecution of separate actions by individual members of the Class
 10 would create the risk of inconsistent or varying adjudications for individual members of the Class
 11 and the risk of establishing incompatible standards of conduct for Defendants.

12 (g) Conflicting adjudications for individual members of the Class might as a
 13 practical matter be dispositive of the interests of the other members not parties to the adjudications,
 14 or substantially impair or impede their ability to protect their interests.

15 16 17 **SUBSTANTIVE ALLEGATIONS**

18 30. SouthWest Water provides water and wastewater related services principally in the
 19 United States. The company offers operations, maintenance, and management services, including
 20 water production, treatment, and distribution, wastewater collection and treatment, customer
 21 services, and utility infrastructure construction management. The Company owns water and
 22 wastewater utilities located in California, Alabama, Mississippi, and Texas, which primarily serve
 23 residential customers. As of November 9, 2009, the Company owned 131 systems and operated
 24 hundreds more under contract to cities, utility districts and private companies.

25 31. The Company has been recognized for its outstanding service and for providing top-
 26 notch water systems on numerous occasions. For example, on August 20, 2009, the Company
 27

1 announced that it received perfect scores in a state inspection of its water systems in the City of
 2 Gulfport, Mississippi. As stated in the press release:

3 LOS ANGELES--(BUSINESS WIRE)--August 20, 2009--SouthWest
 4 Water Company (NASDAQ:SWWC) today announced that four City of
 5 Gulfport, Mississippi, water systems that are operated and maintained by
 6 SouthWest Water are perfect, according to the Mississippi State
 7 Department of Health. After a rigorous inspection and evaluation of five
 8 systems, four earned a perfect score of 5.0 and one earned the second-
 9 highest rating of 4.7.

10 “There is a lot that goes into making our water not only safe to drink, but
 11 making it the best quality water possible,” said George Schloegel, the
 12 mayor of Gulfport. “We could not be more pleased with these results and
 13 thank SouthWest Water for their professional operation of our systems.”

14 * * *

15 “Gulfport is the second largest city in Mississippi and getting a perfect
 16 score on multiple drinking water systems that serve this many residents is
 17 a rare and major accomplishment,” said Jeff Blackwell, SouthWest
 18 Water’s project manager in Gulfport. “Fulfilling the state department’s
 19 stringent evaluation standards requires great operational focus and
 20 expertise. We are committed to providing the highest level of service to
 21 Gulfport’s residents and we are proud that these results show how our
 22 efforts are paying off for the City.”

23 32. On September 10, 2009, the Company announced a 10-year renewal contract with
 24 Horizon Regional Municipal Utility District (“HRMUD”) in Horizon City, Texas, under which
 25 SouthWest Water will continue to operate and maintain HRMUD’s water and wastewater systems
 26 and manage its meter reading, billing, and collections. As stated in the press release announcing the
 27 contract:

28 “SouthWest Water does an excellent job serving our community,” said
 HRMUD President John Navidomskis. “We are happy to renew this
 contract and ensure the continuity of this quality service.”

“We are proud of the support and confidence that the HRMUD’s officials
 have shown in us,” said Jim Brown, Managing Director of SouthWest
 Water’s Texas MUD Services division. “We look forward to continuing to
 provide outstanding service to the residents of Horizon City.”

1 33. On October 23, 2009, the Company announced that its board of directors had raised
2 the company's quarterly cash dividend on its common stock from \$0.025 per share to \$0.05 per
3 share, representing a 100% increase. In the press release announcing the dividends, Mark Swatek,
4 SouthWest Water chief executive officer, said, "Today's action *reflects our board's confidence in*
5 *the underlying performance of the company and our long-term business outlook.*"

6 34. On November 9, 2009, the Company announced its financial results for the third
7 quarter ending September 30, 2009. The Company announced that operating revenue increased by
8 3%, to \$59.0 million, for the 2009 third quarter, compared to \$57.5 million in the third quarter of
9 2008. In addition, the Company reported that adjusted income from continuing operations was \$1.1
10 million, or \$0.05 per diluted share, compared with adjusted income from continuing operations of
11 \$0.1 million, or \$0.00 per diluted share, for the third quarter of 2008. As stated by Defendant
12 Swatek, SouthWest Water president and chief executive officer, in the press release announcing the
13 financial results, "We are pleased that our revenue continues to grow as a result of the regulatory
14 relief we have been granted in our owned utilities and the increased project work our Texas MUD
15 operations have completed this year versus last. *As we continue to hone in on areas where we can*
16 *make a positive impact on costs, we also expect to see continued improvement in our operating*
17 *efficiencies.*"

18 35. On February 9, 2010, the Company announced that it received high scores from the
19 Mississippi State Department of Health for three wells the company operates for the Pearl River
20 County Utility Authority (PRCUA). The PRCUA coordinates the delivery of water, wastewater and
21 storm water services for residents of Mississippi's Pearl River County. As stated by PRCUA
22 Operations Manager Cliff Diamond in the press release announcing the achievement, "SouthWest
23 Water's hard work has greatly improved our systems. Their emergency response time has been
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1 excellent, and the Authority is pleased with the professional service and commitment they have
2 shown us.”

3 36. Despite its recent performance and bright outlook, the Company agreed to enter into
4 the Proposed Transaction. In a press release dated March 3, 2010, the Company announced that it
5 had entered into a merger agreement with the Buyers, stating:

6 LOS ANGELES, California, March 3, 2010– SouthWest Water Company
7 (NASDAQ:SWWC) today announced it has entered into a definitive merger
8 agreement to be acquired for approximately \$275 million in cash, or \$11.00
per share, by institutional investors advised by J.P. Morgan Asset
Management and Water Asset Management L.L.C. (the partnership).

9 * * *

10 Andrew Walters, vice president of J.P. Morgan Asset Management’s
11 Infrastructure Investments Group, said, “We believe that SouthWest Water is
12 an excellent, long-term investment for the partnership. We look forward to
working with SouthWest Water’s experienced management and talented
13 workforce to deliver cost effective customer service to a growing customer
base over time. A seamless transition and continuity are high priorities for us
14 and we look forward to continuing to work with management and employees
in the company’s service territories to ensure continued responsiveness to
needs of local customers and communities.”

15 * * *

16 “SouthWest Water has made a significant commitment to improve the water
17 service infrastructure in the regions it serves, and, in turn, enhance service
and reliability to its customers,” said Disque Deane Jr. of Water Asset
18 Management. “Our partnership is committed to funding necessary
maintenance and upgrades over the long-term”.

19 * * *

20 Prior to the closing of the acquisition, members of the partnership will invest
21 approximately \$16 million in 2.7 million newly issued SouthWest Water
shares under a private placement, priced at \$6.00 per share. SouthWest Water
22 intends to use the proceeds to assist the financing of ongoing utility
infrastructure investments. As the offer and sale of the shares of common
23 stock will not be registered under the Securities Act of 1933 or applicable
state securities laws, the shares of common stock may not be offered or sold
24 in the United States absent registration or an applicable exemption from such
registration requirements. This document is being issued pursuant to and in
25 accordance with Rule 135c under the Securities Act and does not constitute
an offer to sell or a solicitation of an offer to buy the shares of common stock.
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1 37. Given the Company's recent performance and future prospects, the consideration
2 shareholders are to receive is inadequate. In fact, prior to the recession and the general financial
3 turmoil that began in late 2008, SouthWest Water's stock had been trading as high as \$13.40 per
4 share in September, 2008. Accordingly, the Buyers are picking up SouthWest Water at the most
5 opportune time, a time when SouthWest Water is poised for growth and its stock price is trading at
6 a huge discount to its intrinsic value.

7 38. In addition, on March 3, 2010, the Company filed a Form 8-K with the United States
8 Securities and Exchange Commission ("SEC"), wherein it disclosed the operating Agreement and
9 Plan of Merger for the Proposed Transaction (the "Merger Agreement"). As part of the Merger
10 Agreement, Defendants agreed to certain onerous and preclusive deal protection devices that
11 operate conjunctively to make the Proposed Transaction a *fait accompli* and ensure that no
12 competing offers will emerge for the Company.

13 39. By way of example, §6.4(a) of the Merger Agreement includes a "no solicitation"
14 provision barring the Board and any Company personnel from attempting to procure a price in
15 excess of the amount offered by the Buyers. This section also demands that the Company terminate
16 any and all prior or ongoing discussions with other potential suitors. Despite the fact that they have
17 locked up the Company and bound it not to solicit alternative bids, the Merger Agreement provides
18 other ways that guarantee that the only suitor will be the Buyers.

19 40. Pursuant to §6.4 of the Merger Agreement, should an unsolicited bidder arrive on the
20 scene, the Company must notify the Buyers of the bidder's offer. Thereafter, should the Board
21 determine that the unsolicited offer is superior, the Buyers are granted five days to amend the terms
22 of the Merger Agreement to make a counter-offer so that the competing bid no longer constitutes a
23 superior proposal. The Buyers are able to match the unsolicited offer because they are granted
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1 unfettered access to the unsolicited offer in its entirety, eliminating any leverage that the Company
2 has in receiving the unsolicited offer.

3 41. In other words, the Merger Agreement gives the Buyers access to any rival bidder's
4 information and allows the Buyers a free right to top any superior offer. Accordingly, no rival
5 bidder is likely to emerge and act as a stalking horse for the Buyers because the Merger Agreement
6 unfairly assures that any "auction" will favor the Buyers and piggy-back upon the due diligence of
7 the foreclosed second bidder.

8 42. In addition, the Merger Agreement provides that a termination fee of 3% of the
9 Proposed Transaction consideration be paid to Buyers by SouthWest Water if the Company decides
10 to pursue said other offer, thereby essentially requiring the alternate bidder to agree to pay a naked
11 premium for the right to provide the shareholders with a superior offer.

12 43. Ultimately, these preclusive deal protection provisions illegally restrain the
13 Company's ability to solicit or engage in negotiations with any third party regarding a proposal to
14 acquire all or a significant interest in the Company. The circumstances under which the Board may
15 respond to an unsolicited written bona fide proposal for an alternative acquisition that constitutes or
16 would reasonably be expected to constitute a superior proposal are too narrowly circumscribed to
17 provide an effective "fiduciary out" under the circumstances. Likewise, these provisions also
18 foreclose any likely alternate bidder from providing the needed market check of the Buyers'
19 inadequate offer price.

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22 **THE MATERIALLY MISLEADING AND INCOMPLETE**
23 **PROXY STATEMENT**

24 44. On April 23, 2010, the Company filed a Schedule 14A Proxy Statement (the
25 "Proxy") with the SEC in connection with the Proposed Transaction.

1 45. The Proxy fails to provide the Company's shareholders with material information
2 and/or provides them with materially misleading information thereby rendering the shareholders
3 unable to make an informed decision on whether to vote in favor of the Proposed Transaction.

4 46. For example, the Proxy completely fails to disclose the underlying methodologies,
5 projections, key inputs and multiples relied upon and observed by Wells Fargo Securities, LLC
6 ("Wells Fargo"), the Company's financial advisor, so that shareholders can properly assess the
7 credibility of the various analyses performed by Wells Fargo and relied upon by the Board in
8 recommending the Proposed Transaction. In particular, the Proxy is deficient and should provide,
9 *inter alia*, the following:
10

- 11 (i) The financial projections and forecasts of the Company relied upon
12 by Wells Fargo in rendering its fairness opinion.
- 13 (ii) The criteria utilized by Wells Fargo to determine which companies
14 were comparable to the Company that were used in the *Comparable Public Companies Analysis*.
- 15 (iii) The multiples observed for each company in the *Comparable Public*
16 *Companies Analysis*, as well as the Company's 2010E EBITDA, 2011E EBITDA, 2010E EPS, and 2011E EPS used in the analysis.
- 17 (iv) The "range of multiples" applied to the Company's corresponding
18 financial data in the *Comparable Public Companies Analysis*, the
19 criteria used to select that range, and the implied per share equity
20 range calculated for each of the 4 multiples analyzed in the analysis.
- 21 (v) Information regarding the use (or lack of use) of a control premium in
22 the *Comparable Public Companies Analysis*, i.e. whether Wells Fargo
23 applied a control premium when calculating the implied per share
24 value of SouthWest Water common stock in the analysis, and if so to
25 provide details regarding its calculation, and if not, the reasons for not
26 doing so.
- 27 (vi) The criteria utilized by Wells Fargo to determine which companies
28 had similar "results, market size, or operations" to the Company that
were used in the *Selected Transactions Analysis*.
- (vii) The transaction value and EV/One-year forward EBITDA multiples
observed for each company in the *Selected Transactions Analysis*, as

well as the Company's EBITDA for the 12-month period ending December 31, 2011 used in the analysis.

(viii) The criteria used to select the 8.5x to 10.0x range of multiples used in the *Selected Transactions Analysis*.

(ix) The criteria used to select the 16.0x to 19.0x range of multiples used in the *Illustrative Present Value of Future Share Price Analysis*.

(x) The definition of free cash flows used in the *Illustrative Discounted Cash Flow Analysis*, the criteria used to select the 9.0x to 10.0x range of EBITDA multiples used in the analysis, and the key inputs used to calculate the Company's weighted average cost of capital used in the analysis.

(xi) The transaction value and premiums observed for each transaction in the *Premiums Paid Analysis*.

47. Further, the Proxy omits material information regarding the financial advisor retained in connection with the Proposed Transaction. Specifically, the Proxy fails to inform the shareholders the (i) criteria used for selecting Wells Fargo including whether other investment advisors were considered, (ii) the "modifications" to Wells Fargo's engagement with the Company discussed by the special committee on February 9, 2009, (iii) the amount of fees SouthWest Water has agreed to pay Wells Fargo for its services in connection with the Proposed Transaction, and (iv) the services Wells Fargo have provided to the Company and Buyers in the past and the amount of compensation received for such services. It is material for shareholders to be informed as to why the Board selected Wells Fargo as well as any other financial and economic interests Wells Fargo or its clients have in the Proposed Transaction or in the parties involved that could be perceived or create a conflict of interest.

48. The Proxy also fails to disclose material information concerning the financial benefits received by certain directors and officers in the Proposed Transaction. In particular, the Proxy states that "upon consummation of the merger, 103,306 shares of restricted stock (of which 48,536 shares are performance contingent restricted stock) held by our executive officers will

1 become fully vested and will be converted into the right to receive \$11.00 per share, or
2 approximately \$1,136,000 in the aggregate,” but fails to disclose how many shares of stock are held
3 by each executive officer individually. In addition, the Proxy states that the Company entered into
4 “retention agreements with certain members of its management team” to help with successful
5 completion of the merger pursuant to which such members will become provided with the payment
6 of a bonus if the individual remains employed by the Company for 90 days following
7 consummation of the Proposed Transaction. The Proxy should disclose which officers signed
8 retention agreements and the amount of the bonus to be received.
9

10 49. The Proxy also fails to disclose material information concerning the value of the
11 Company’s individual operations and the indications of interest received for certain operations. In
12 particular, the Proxy states that on February 24, 2010, “SB-D submitted a proposal to acquire our
13 California utility for cash and SB-E submitted a proposal to acquire our regulated Texas assets for
14 cash,” and that the Special Committee determined not to concentrate on those proposals because
15 “the consideration to be received by our stockholders from these transactions appeared to be far
16 below that which would be received from either of the other two proposals.” The Proxy must
17 disclose the value of each of these two proposals, and what analyses the Board relied upon in
18 assessing the value of the Company’s California utility and its Texas assets. In addition, the Proxy
19 states on April 8, 2009, Wells Fargo provided the Board with a sum-of-the-parts analysis to describe
20 to the Board how “the values of the various operations might be unlocked in one or more asset sales
21 and whether the sum of the value of the parts of the enterprise might be greater than the value of the
22 whole from the stockholders’ perspective.” The Proxy should disclose the results of such analysis,
23 especially in light of SB-D’s and SB-E’s indications of interest received later in the sales process.
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26 50. The Proxy also fails to describe material information concerning the sales process
27 conducted by the Company, including the criteria used to select potential partners, the discussions
28

1 and negotiations held with such parties, and the values of the offers received. For example, the
 2 Proxy:

- 3 (i) Fails to disclose the value of the non-binding indication of interest
 4 received from SB-A on January 16, 2009.
- 5 (ii) Fails to disclose how many parties were on the list prepared by Wells
 6 Fargo that was reviewed by the special committee on February 17,
 7 2009, the process used by Wells Fargo to select parties to be included
 8 in the list, and the decisions with respect to the parties on the list
 9 made by the special committee.
- 10 (iii) Fails to disclose the criteria used by the special committee on
 11 February 23, 2009 to determine which bidders Wells Fargo should
 12 contact.
- 13 (iv) Fails to disclose how FB-C learned of the sales process, i.e. whether
 14 FB-C was one of the original 11 parties contacted by Wells Fargo
 15 between March 2, 2009 through March 4, 2009, and if not how it
 16 became aware that Wells Fargo was conducting a sales process.
- 17 (v) Fails to disclose the values of the 7 indications of interest received on
 18 April 10, 2009.
- 19 (vi) Is ambiguous as to which parties the Special Committee admitted into
 20 the second round of the bidding process on April 16, 2009 and needs
 21 to disclose which parties were not admitted and the reasons those
 22 parties were not admitted.
- 23 (vii) Fails to disclose the reasons FB-C withdrew from the process on July
 24 16, 2009.
- 25 (viii) Fails to disclose how IIF LLC learned of the sales process, i.e.
 26 whether IIF LLC was one of the original 11 parties contacted by
 27 Wells Fargo between March 2, 2009 through March 4, 2009, and if
 28 not how it became aware that Wells Fargo was conducting a sales
 process.
- (ix) Fails to disclose the value of FB-B's indication of interest to purchase
 the Company on July 20, 2009 and the value of its revised indication
 of interest on November 2, 2009.
- (x) Fails to disclose the reasons the special committee determined to
 invite only seven parties to submit indications of interest on
 November 23, 2009, and did not determine to solicit interest from
 additional parties, including the two strategic buyers that submitted an
 unsolicited interest on July 16, 2009.

- (xi) Fails to disclose the values of the 7 indications of interest received on December 9, 2009, and the value of SB-F's indication of interest received on December 10, 2009.
- (xii) Fails to disclose the reasons SB-A was not allowed to continue with due diligence on December 16, 2009.
- (xiii) Fails to disclose the reasons SB-F withdrew from the bidding process on February 3, 2010.
- (xiv) Fails to disclose the reasons SB-B and SB-C determined not to submit proposals on February 24, 2010.
- (xv) Fails to disclose the "potential benefit to the Company from the proposed equity investments" by FB-B and IIF LLC/WAM discussed by the special committee on February 26, 2010.
- (xvi) Fails to disclose the value that FB-B increased its proposed price to on February 28, 2010.

It is absolutely necessary for shareholders to receive a Proxy that provides all material disclosures related to the sales process in order for shareholders to be able to cast a fully informed decision regarding the Proposed Transaction.

51. The Proxy also fails to disclose material information concerning the reasons the Board determined in late July 2009 to delay the sales process including the "other operational issues" the Company needed to deal with, the "potential uncertainties in the bid process" resulting from these issues, and the "effect the process was having on the business". In addition, the Proxy should disclose "the potential impact of a delay on the process and potential bidder reaction" that was discussed between Wells Fargo, the Board and the special committee, and what the special committee determined with respect to "whether there was a viable alternative to delaying or terminating the process" that was discussed on July 29, 2009. Lastly, the Proxy should disclose why waiting until the Company filed its third quarter Form 10-Q to resume the bidding process was the best alternative among all those discussed.

1 52. The Proxy also fails to disclose material information concerning the special
2 committees formed by the Board throughout the sales process, including a) the members of the
3 special committee that was formed on November 5, 2007, b) the criteria used to select Geoffrey
4 Ketcham, and Defendants Iino and Jones to serve on the special committee formed by the Board on
5 January 21, 2009 as well as the reasons Defendant Newman, the chair of the late-2007 special
6 committee was not originally included as a member of this committee, c) the criteria used to select
7 Defendant Huennekens to replace Ketcham on the special committee on January 26, 2009, and d)
8 the reasons Edwards and Newman were added as members of the special committee on October 23,
9 2009 and the reasons Huennekens was removed.

11 53. Lastly, the Proxy further neglects to provide shareholders with sufficient information
12 to evaluate the pros and cons associated with the other strategic alternatives, other than the sale of
13 the Company, including the values and risks associated with SouthWest Water remaining as a
14 stand-alone Company -- information which is vital to shareholders in deciding how to vote
15 regarding the Proposed Transaction. In particular, the Proxy should disclose the "strategic
16 alternatives available to the Company" that were presented by Wells Fargo to the Board and/or
17 special committee on February 4 and 12, 2009, "the potential alternative transactions available to
18 the Company" discussed by the special committee on February 23, 2009, and "the potential
19 strategic alternatives available to the Company" presented by Wells Fargo to special committee on
20 April 16, 2009, and the reasons such alternatives were not pursued.

22 54. Accordingly, Plaintiffs seek injunctive and other equitable relief to prevent the
23 irreparable injury that Company shareholders will continue to suffer absent judicial intervention.
24

25 CLAIM FOR RELIEF

26 COUNT I

27 Breach of Fiduciary Duty—Failure to Maximize Shareholder Value 28 (Against All Individual Defendants)

1 55. Plaintiffs repeat all previous allegations as if set forth in full herein.

2 56. As Directors of SouthWest Water, the Individual Defendants stand in a fiduciary
3 relationship to Plaintiffs and the other public stockholders of the Company and owe them the
4 highest fiduciary obligations of loyalty and care. The Individual Defendants' recommendation of
5 the Proposed Transaction will result in a change of control of the Company, which imposes
6 heightened fiduciary responsibilities to maximize SouthWest Water's value for the benefit of the
7 stockholders and requires enhanced scrutiny by the Court.

8 57. As discussed herein, the Individual Defendants have breached their fiduciary duties
9 to SouthWest Water shareholders by failing to engage in an honest and fair sale process.

10 58. As a result of the Individual Defendants' breaches of their fiduciary duties, Plaintiffs
11 and the Class will suffer irreparable injury in that they have not and will not receive their fair
12 portion of the value of SouthWest Water's assets and will be prevented from benefiting from a
13 value-maximizing transaction.

14 59. Unless enjoined by this Court, the Individual Defendants will continue to breach
15 their fiduciary duties owed to Plaintiffs and the Class, and may consummate the Proposed
16 Transaction, to the irreparable harm of the Class.

17 60. Plaintiffs and the Class have no adequate remedy at law.

18
19
20 **COUNT II**
21 **Breach of Fiduciary Duty -- Disclosure**
22 **(Against Individual Defendants)**

23 61. Plaintiffs repeat all previous allegations as if set forth in full herein.

24 62. The fiduciary duties of the Individual Defendants in the circumstances of the
25 Proposed Transaction require them to disclose to Plaintiffs and the Class all information material to
26 the decisions confronting SouthWest Water's shareholders.

63. As set forth above, the Individual Defendants have breached their fiduciary duty through materially inadequate disclosures and material disclosure omissions.

64. As a result, Plaintiffs and the Class members are being harmed irreparably.

65. Plaintiffs and the Class have no adequate remedy at law.

COUNT III

Aiding and Abetting (Against SouthWest Water and the Buyers)

66. Plaintiffs repeat all previous allegations as if set forth in full herein.

67. As alleged in more detail above, SouthWest Water and the Buyers are well aware that the Individual Defendants have not sought to obtain the best available transaction for the Company's public shareholders. Defendants SouthWest Water and the Buyers aided and abetted the Individual Defendants' breaches of fiduciary duties.

68. As a result, Plaintiffs and the Class members are being harmed.

69. Plaintiffs and the Class have no adequate remedy at law.

COUNT IV

Violations of Section 14(a) of the Exchange Act and Rule 14a-9 Promulgated Thereunder (Against Individual Defendants)

70. Plaintiffs repeat all previous allegations as if set forth in full herein.

71. Defendants have issued the Proxy with the intention of soliciting shareholder support of the Proposed Transaction.

72. Rule 14a-9, promulgated by SEC pursuant to Section 14(a) of the Exchange Act provides that a proxy statement shall not contain "any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading." 17 C.F.R. §240.14a-9.

1 73. Specifically, the Proxy violates the Section 14(a) and Rule 14a-9 because it omits
2 material facts, including those set forth above. Moreover, in the exercise of reasonable care,
3 Defendants should have known that the Proxy is materially misleading and omits material facts that
4 are necessary to render them non-misleading.

5 74. The misrepresentations and omissions in the Proxy are material to Plaintiffs and the
6 Class, and Plaintiffs and the Class will be deprived of their entitlement to cast a fully informed vote
7 if such misrepresentations and omissions are not corrected prior to the vote on the Proposed
8 Transaction.
9

10 **WHEREFORE**, Plaintiffs demand judgment against Defendants jointly and severally, as
11 follows:

12 (a) declaring this action to be a class action and certifying Plaintiffs as the Class
13 representatives and their counsel as Class counsel;

14 (b) declaring that the Proxy contained misleading statements of material fact and
15 omissions of material fact in violation of Section 14(a) of the Exchange Act and Rule 14a-9
16 promulgated thereunder and that SouthWest Water and the Individual Defendants violated said
17 provisions;
18

19 (c) enjoining, preliminarily and permanently, the Proposed Transaction;

20 (d) in the event that the transaction is consummated prior to the entry of this
21 Court's final judgment, rescinding it or awarding Plaintiffs and the Class rescissory damages;

22 (e) directing that Defendants account to Plaintiffs and the other members of the
23 Class for all damages caused by them and account for all profits and any special benefits obtained
24 as a result of their breaches of their fiduciary duties;
25

26 (f) awarding Plaintiffs the costs of this action, including a reasonable allowance
27 for the fees and expenses of Plaintiffs' attorneys and experts; and
28

1 (g) granting Plaintiffs and the other members of the Class such further relief as
2 the Court deems just and proper.

3
4 DATED: April 29, 2010

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5
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